

1.1 **Department of Human Services**

1.2 **Proposed Permanent Rules Relating to Positive Support Strategies, Safety**
1.3 **Interventions, and Emergency Use of Manual Restraint in Home and**
1.4 **Community-Based Services**

1.5 **9544.0005 PURPOSE.**

1.6 Chapter 9544 establishes methods, procedures, and standards to be used by providers
1.7 governed by this chapter for the use of positive support strategies with persons receiving
1.8 services. The purpose of these rules is to improve the quality of life of persons receiving
1.9 home and community-based services or other licensed services by:

1.10 A. promoting community participation, person-centeredness, and an approach
1.11 that focuses on supporting persons receiving services in the most integrated setting;

1.12 B. focusing on creating quality environments and lifestyles as primary
1.13 responsibilities of license holders;

1.14 C. ensuring collaborative, team-based development of positive support strategies;

1.15 D. providing training to the person who receives services to improve the person's
1.16 skills and facilitate the person's ability to meet self-identified goals;

1.17 E. increasing the person's self-determination abilities so the person may engage
1.18 in community activity to the greatest degree reasonably attainable;

1.19 F. developing specific support programs that promote outcomes valued by the
1.20 person, the person's family, and the community to help the person receiving services
1.21 improve the person's quality of life;

1.22 G. ensuring people are free from humiliating and demeaning procedures;

1.23 H. eliminating all uses of aversive or deprivation procedures;

1.24 I. creating a consistent set of standards for license holders to respond to behavior
1.25 when serving people across licensed services and settings; and

2.1 J. building staff knowledge and competence throughout a license holder's
2.2 organization about the development and implementation of positive behavioral supports,
2.3 person-centered planning, and community integration.

2.4 **9544.0010 APPLICABILITY.**

2.5 Subpart 1. Applicability to providers licensed under Minnesota Statutes, chapter
2.6 245D. This chapter applies to providers of home and community-based services to persons
2.7 with a disability or persons age 65 and older governed by Minnesota Statutes, chapter 245D.

2.8 Subp. 2. Applicability to other licensed services and settings. This chapter applies
2.9 to other licensed providers and in other settings licensed by the commissioner under
2.10 Minnesota Statutes, chapter 245A, for services to persons with a developmental disability
2.11 or related condition.

2.12 Subp. 3. Related law. This chapter must be read in conjunction with chapter 9525
2.13 and Minnesota Statutes, chapters 245, 245A, 245D, 252, 252A, and 256. License holders
2.14 are subject to the requirements of this chapter and to all other applicable state and federal
2.15 regulations governing the provision of services provided by the license holder.

2.16 Subp. 4. Standards governing the use of restrictive interventions. Parts
2.17 9544.0060 and 9544.0070 shall supersede any standards in other state rules that govern
2.18 the use of restrictive interventions.

2.19 **9544.0020 DEFINITIONS.**

2.20 Subpart 1. Scope. Except as provided in subpart 42, terms used in parts 9544.0005 to
2.21 9544.0140 have the meanings given in this part.

2.22 Subp. 2. Aversive procedure. "Aversive procedure" has the meaning given in
2.23 Minnesota Statutes, section 245D.02, subdivision 2b.

3.1 Subp. 3. **Behavior intervention report form.** "Behavior intervention report form"
3.2 means the form prescribed by the commissioner to collect data in accordance with the
3.3 requirements in Minnesota Statutes, section 245.8251, subdivision 2.

3.4 Subp. 4. **Case manager.** "Case manager" has the meaning given in Minnesota
3.5 Statutes, section 245D.02, subdivision 3.

3.6 Subp. 5. **Chemical restraint.** "Chemical restraint" has the meaning given in
3.7 Minnesota Statutes, section 245D.02, subdivision 3b.

3.8 Subp. 6. **Child with severe emotional disturbance.** "Child with severe emotional
3.9 disturbance" has the meaning given in Minnesota Statutes, section 245.4871, subdivision 6.

3.10 Subp. 7. **Commissioner.** "Commissioner" means the commissioner of the
3.11 Department of Human Services.

3.12 Subp. 8. **Crisis respite services.** "Crisis respite services" means in-home or
3.13 out-of-home short-term care and intervention strategies provided to a person to address the
3.14 person's medical or behavioral needs so as to support the person's caregiver and protect
3.15 the person or others living with that person.

3.16 Subp. 9. **Cultural competence.** "Cultural competence" has the meaning given in
3.17 Minnesota Statutes, section 245D.02, subdivision 4e.

3.18 Subp. 10. **Deprivation procedure.** "Deprivation procedure" has the meaning given
3.19 in Minnesota Statutes, section 245D.02, subdivision 5a.

3.20 Subp. 11. **Developmental disability or related condition.** "Developmental disability
3.21 or related condition" has the meaning given in part 9525.0016, subpart 2, items A to E.

3.22 Subp. 12. **Direct support staff.** "Direct support staff" has the meaning given in
3.23 Minnesota Statutes, section 245D.02, subdivision 6a.

3.24 Subp. 13. **Emergency use of manual restraint.** "Emergency use of manual
3.25 restraint" has the meaning given in Minnesota Statutes, section 245D.02, subdivision 8a.

4.1 Subp. 14. **Expanded support team.** "Expanded support team" has the meaning
4.2 given in Minnesota Statutes, section 245D.02, subdivision 8b.

4.3 Subp. 15. **External program review committee.** "External program review
4.4 committee" means a committee appointed by the commissioner to fulfill the functions
4.5 described in Minnesota Statutes, section 245.8251, subdivisions 3 and 4.

4.6 Subp. 16. **External qualified professional.** "External qualified professional" means
4.7 a qualified professional who is not under the direction and control of the license holder and
4.8 is not an employee of or a subcontractor used by the license holder to perform services
4.9 subject to the requirements of this chapter.

4.10 Subp. 17. **Family foster care.** "Family foster care" has the meaning given in
4.11 Minnesota Statutes, section 245D.02, subdivision 8c.

4.12 Subp. 18. **Faradic shock.** "Faradic shock" means of or pertaining to a discontinuous,
4.13 asymmetric, alternating or direct current from the second winding of an induction coil.

4.14 Subp. 19. **Forms and instructions.** "Forms and instructions" means the forms and
4.15 instructions referenced in Minnesota Statutes, section 245D.06, subdivision 8, paragraph
4.16 (a).

4.17 Subp. 20. **Functional behavior assessment.** "Functional behavior assessment"
4.18 means an assessment that operationally defines the target behaviors, identifies the
4.19 situations in which the target behaviors are likely to occur and not occur, and generates
4.20 a hypothesis of why the behaviors occur. A functional behavior assessment must be
4.21 conducted by a qualified professional and must consist of direct observation and one or
4.22 more of the following elements:

4.23 A. an assessment of biological factors, such as a medical assessment or a
4.24 dental assessment;

5.1 B. an assessment of psychological factors, such as a diagnostic assessment or
5.2 a suicidality assessment;

5.3 C. an assessment of environmental factors, such as direct observation or
5.4 interviewing a significant individual in the person's life; and

5.5 D. an assessment of quality of life indicators based on the person's goals and
5.6 needs within each domain of a meaningful life.

5.7 Subp. 21. **Home and community-based services.** "Home and community-based
5.8 services" has the meaning given in Minnesota Statutes, section 245D.02, subdivision 10.

5.9 Subp. 22. **Interfering behavior.** "Interfering behavior" means a behavior or
5.10 psychiatric symptom that prevents a person from engaging in a more integrated setting or
5.11 from participation in the most integrated setting.

5.12 Subp. 23. **Legal representative.** "Legal representative" has the meaning given in
5.13 Minnesota Statutes, section 245D.02, subdivision 12.

5.14 Subp. 24. **Level program.** "Level program" means a type of program in which
5.15 participants move up, and sometimes down, a hierarchy of levels contingent on meeting
5.16 specific performance criteria with respect to target behavior. Moving up a level gains access
5.17 to more privileges, and the person is expected to demonstrate more independence. Moving
5.18 down a level reduces privileges and provides access to a smaller universe of opportunities.

5.19 Subp. 25. **License.** "License" has the meaning given in Minnesota Statutes, section
5.20 245A.02, subdivision 8.

5.21 Subp. 26. **License holder.** "License holder" has the meaning given in Minnesota
5.22 Statutes, section 245D.02, subdivision 15.

5.23 Subp. 27. **Manual restraint.** "Manual restraint" has the meaning given in Minnesota
5.24 Statutes, section 245D.02, subdivision 15a.

6.1 Subp. 28. **Mechanical restraint.** "Mechanical restraint" has the meaning given in
6.2 Minnesota Statutes, section 245D.02, subdivision 15b. Mechanical restraint includes
6.3 use of an auxiliary device to ensure a person does not unfasten a seat belt in a vehicle.
6.4 Mechanical restraint does not include:

6.5 A. use of a seat belt as required under Minnesota Statutes, section 169.686; or

6.6 B. use of a child passenger restraint system as required under Minnesota
6.7 Statutes, section 245A.18, subdivision 1.

6.8 Subp. 29. **Medication.** "Medication" has the meaning given in Minnesota Statutes,
6.9 section 245D.02, subdivision 16.

6.10 Subp. 30. **Mental health mobile crisis intervention services.** "Mental health
6.11 mobile crisis intervention services" has the meaning given in Minnesota Statutes, section
6.12 256B.0624, subdivision 2, paragraph (d).

6.13 Subp. 31. **Mental illness.** For an adult, "mental illness" has the meaning given in
6.14 Minnesota Statutes, section 245.462, subdivision 20.

6.15 Subp. 32. **Most integrated setting.** "Most integrated setting" has the meaning given
6.16 in Minnesota Statutes, section 245D.02, subdivision 20a.

6.17 Subp. 33. **Normal goods and services.** "Normal goods and services" means
6.18 a person's normal access to a nutritious diet, drinking water, adequate ventilation,
6.19 necessary medical care, ordinary hygiene facilities, normal sleeping conditions, or
6.20 necessary clothing, in accordance with Minnesota Statutes, section 245D.06, subdivision
6.21 6, paragraph (b), clause (4), or to any protection required by state licensing standards and
6.22 federal regulations governing the program.

6.23 Subp. 34. **Outcome.** "Outcome" has the meaning given in Minnesota Statutes,
6.24 section 245D.02, subdivision 21a.

6.25 Subp. 35. **Pain.** "Pain" means physical pain, mental pain, or emotional distress.

7.1 Subp. 36. **Person.** "Person" means a person as defined under Minnesota Statutes,
7.2 section 245D.02, subdivision 22, receiving home and community-based services, a
7.3 person age 65 or older receiving home and community-based services, or a person with a
7.4 developmental disability or related condition receiving services licensed under Minnesota
7.5 Statutes, chapter 245A.

7.6 Subp. 37. **Person-centered planning.** "Person-centered planning" means a strategy
7.7 used to facilitate team-based plans for improving a person's quality of life as defined by
7.8 the person, the person's family, and other members of the community, and that focuses on
7.9 the person's preferences, talents, dreams, and goals. It is part of a family of approaches to
7.10 organizing and guiding community change in alliance with people with disabilities and
7.11 their families and friends.

7.12 Subp. 38. **Person with a disability.** "Person with a disability" has the meaning given
7.13 in Minnesota Statutes, section 245D.02, subdivision 23.

7.14 Subp. 39. **Physician.** "Physician" has the meaning given in Minnesota Statutes,
7.15 section 245D.02, subdivision 23a.

7.16 Subp. 40. **Positive support strategy.** "Positive support strategy" means a
7.17 strengths-based strategy based on an individualized assessment that emphasizes teaching
7.18 a person productive and self-determined skills or alternative strategies and behaviors
7.19 without the use of restrictive interventions.

7.20 Subp. 41. **Positive support transition plan.** "Positive support transition plan" has
7.21 the meaning given in Minnesota Statutes, section 245D.02, subdivision 23b.

7.22 Subp. 42. **Program.** "Program" has the meaning given in Minnesota Statutes,
7.23 section 245D.02, subdivision 26. This subpart applies to parts 9544.0020, subparts 15,
7.24 33, and 46; 9544.0060, subpart 2, item U; 9544.0090, subpart 5; 9544.0110; 9544.0120;
7.25 and 9544.0130.

8.1 Subp. 43. **Prone restraint.** "Prone restraint" has the meaning given in Minnesota
8.2 Statutes, section 245D.061, subdivision 3, paragraph (a), clause (7).

8.3 Subp. 44. **Psychotropic medication.** "Psychotropic medication" has the meaning
8.4 given in Minnesota Statutes, section 245D.02, subdivision 27.

8.5 Subp. 45. **Punishment.** "Punishment" means a Type I or Type II action as described
8.6 in items A and B.

8.7 A. Type I action means the contingent application of an aversive stimulus.
8.8 "Aversive stimulus" has the meaning given in Minnesota Statutes, section 245D.02,
8.9 subdivision 2c.

8.10 B. Type II action means the contingent removal of a positive reinforcer.
8.11 "Positive reinforcer" means a consequence or stimulus that is presented following a
8.12 behavior and that causes the behavior to increase.

8.13 Subp. 46. **Qualified professional.** "Qualified professional" is defined separately for
8.14 each type of service and license. Qualified professional means a professional described in
8.15 items A to C; or a professional described in items D to J who has at least two years of
8.16 work experience in writing or implementing positive support plans or treatment plans and
8.17 has demonstrated in an assessment approved by the commissioner that the professional
8.18 is competent to develop and implement positive support transition plans. For purposes
8.19 of this subpart, treatment plan means a written document prepared by a licensed health
8.20 professional that includes a description of the precise treatment goals and the measures
8.21 or services identified to accomplish them. The following occupations are qualified
8.22 professionals for the specified services and settings:

8.23 A. for residential facilities for adults with mental illness governed under parts
8.24 9520.0500 to 9520.0670, a licensed mental health professional as identified in Minnesota
8.25 Statutes, section 245.462, subdivision 18;

9.1 B. for residential mental health treatment for children with severe emotional
9.2 disturbance governed under parts 2960.0010 to 2960.0120 and parts 2960.0580 to
9.3 2960.0700, a licensed mental health professional as identified in Minnesota Statutes,
9.4 section 245.462, subdivision 18, clauses (1) to (6);

9.5 C. for sexual psychopathic personality and sexually dangerous person treatment
9.6 programs governed under parts 9515.3000 to 9515.3110, a licensed mental health
9.7 professional as defined in Minnesota Statutes, section 245.462, subdivision 18, or a
9.8 licensed psychologist as defined in Minnesota Statutes, section 148.907;

9.9 D. for home and community-based services governed under Minnesota Statutes,
9.10 chapter 245D, a designated coordinator as identified in Minnesota Statutes, section
9.11 245D.081, subdivision 2, paragraph (b); a behavior professional as identified in Minnesota
9.12 Statutes, section 245D.091, subdivision 2; or a behavior analyst as identified in Minnesota
9.13 Statutes, section 245D.091, subdivision 3;

9.14 E. for chemical dependency treatment programs governed under parts 9530.6405
9.15 to 9530.6505, a licensed alcohol and drug counselor as defined in part 9530.6450, subpart 5;

9.16 F. for detoxification programs governed under parts 9530.6510 to 9530.6590, a
9.17 chemical dependency assessor as defined in part 9530.6510, subpart 3a;

9.18 G. for chemical dependency treatment programs for children governed under
9.19 parts 2960.0010 to 2960.0120 and parts 2960.0430 to 2960.0500, an alcohol and drug
9.20 counselor supervisor as identified in part 2960.0460, subpart 4; or an alcohol and drug
9.21 counselor as identified in part 2960.0460, subpart 5;

9.22 H. for children's residential facilities governed under parts 2960.0010 to
9.23 2960.0120, including children's residential care, shelter care services, group residential
9.24 settings, and transitional services programs, a program director as identified in part
9.25 2960.0020, subpart 57;

10.1 I. for child care centers governed under chapter 9503, a teacher as defined in
10.2 part 9503.0032; a staff person who meets the qualification requirements in item A or D; or
10.3 a person's case manager as required in Minnesota Statutes, section 256B.092, subdivision
10.4 1a, paragraph (e);

10.5 J. for foster family settings governed under parts 2960.3000 to 2960.3100,
10.6 qualified staff from the country or private child placing agency; and

10.7 K. for the following settings and services, a person who meets the qualification
10.8 requirements in item A or D; or a person's case manager as required in Minnesota Statutes,
10.9 section 256B.092, subdivision 1a, paragraph (e):

10.10 (1) family child care governed under chapter 9502;

10.11 (2) family adult day services governed under Minnesota Statutes, section
10.12 245A.143;

10.13 (3) adult day centers governed under parts 9555.9600 to 9555.9730;

10.14 (4) adult foster care governed under parts 9555.5105 to 9555.6265;

10.15 (5) child foster care governed under parts 2960.3000 to 2960.3340;

10.16 (6) independent living assistance for youth governed under Minnesota
10.17 Statutes, section 245A.22;

10.18 (7) residential programs and services for persons with physical disabilities
10.19 governed under chapter 9570; and

10.20 (8) any other residential or nonresidential program licensed under
10.21 Minnesota Statutes, chapter 245A.

10.22 Subp. 47. **Quality of life indicator.** "Quality of life indicator" means a reportable
10.23 or observable outcome that is measurable and important to the person. Quality of life

11.1 indicators are used to assess beneficial changes desired by the person that enrich the
11.2 person's life experiences.

11.3 Subp. 48. **Restraint.** "Restraint" has the meaning given in Minnesota Statutes,
11.4 section 245D.02, subdivision 28.

11.5 Subp. 49. **Restrictive intervention.** "Restrictive intervention" means prohibited
11.6 procedures identified in Minnesota Statutes, section 245D.06, subdivision 5; prohibited
11.7 procedures identified in part 9544.0060; and the emergency use of manual restraint.

11.8 Subp. 50. **Seclusion.** "Seclusion" has the meaning given in Minnesota Statutes,
11.9 section 245D.02, subdivision 29.

11.10 Subp. 51. **Self-injurious behavior.** "Self-injurious behavior" means behavior of a
11.11 person which results in damage to the person's own body.

11.12 Subp. 52. **Service.** "Service" has the meaning given in Minnesota Statutes, section
11.13 245D.02, subdivision 30.

11.14 Subp. 53. **Target behavior.** "Target behavior" means an observable behavior
11.15 identified in a person's individual plan as the object of efforts intended to reduce or
11.16 eliminate the behavior.

11.17 Subp. 54. **Token reinforcement program.** "Token reinforcement program" means a
11.18 program that requires a person to earn an outcome that is of value to the person. Tokens
11.19 are earned or lost based on behavior. Tokens are traded in exchange for activities, events,
11.20 goods, or services that may not otherwise be available to the person.

11.21 Subp. 55. **Trauma-informed care.** "Trauma-informed care" means an approach
11.22 to engaging a person with a history of trauma that recognizes the presence of trauma
11.23 symptoms and acknowledges the role that trauma has played in the person's life.

11.24 Subp. 56. **Treatment.** "Treatment" has the meaning given in Minnesota Statutes,
11.25 section 245D.02, subdivision 35a.

12.1 Subp. 57. Variance. "Variance" means written approval by the commissioner for a
12.2 license holder or applicant to depart from the requirements of parts 9544.0005 to 9544.0140.

12.3 **9544.0030 POSITIVE SUPPORT STRATEGIES AND PERSON-CENTERED**
12.4 **PLANNING.**

12.5 Subpart 1. Positive support strategies required. The license holder must use
12.6 positive support strategies in providing services to a person. These positive support
12.7 strategies must be incorporated in writing to an existing treatment, service, or other
12.8 individual plan required of the license holder.

12.9 Subp. 2. Positive support strategy standards. To develop and implement positive
12.10 support strategies, the license holder must:

12.11 A. assess the person's strengths, needs, and preferences to identify and create a
12.12 positive support strategy;

12.13 B. select positive support strategies that:

12.14 (1) are evidence-based;

12.15 (2) are person-centered;

12.16 (3) are ethical;

12.17 (4) integrate the person in the community;

12.18 (5) are the least restrictive to the person; and

12.19 (6) are effective;

12.20 C. use person-centered planning in accordance with Minnesota Statutes, section
12.21 245D.07, subdivision 1a, paragraph (b), clause (1);

12.22 D. promote the person's self-determination in accordance with Minnesota
12.23 Statutes, section 245D.07, subdivision 1a, paragraph (b), clause (2);

13.1 E. provide the most integrated setting and inclusive service delivery for the
13.2 person in accordance with Minnesota Statutes, section 245D.07, subdivision 1a, paragraph
13.3 (b), clause (3);

13.4 F. create a desirable quality of life for the person through inclusive, supportive,
13.5 and therapeutic environments; and

13.6 G. use person-centered planning regarding the most integrated setting. The
13.7 person-centered planning must:

13.8 (1) include life planning with the person placed at the center of the
13.9 planning process and the person's preferences and choices reflected in the selection
13.10 of services and supports;

13.11 (2) involve the person directly with the person's community, network of
13.12 connections, and close personal relationships that build on the person's capacity to engage
13.13 in activities and promote community life; and

13.14 (3) identify goals to support the person in the most integrated setting.

13.15 Subp. 3. **Person-centered principles.** The license holder must incorporate principles
13.16 of person-centeredness in services it provides to a person. At least every six months, the
13.17 license holder must evaluate with the person whether the services support the person's
13.18 individual preferences, daily needs and activities, and the accomplishment of the person's
13.19 goals in accordance with Minnesota Statutes, section 245D.07, subdivision 1a, paragraph
13.20 (b), and whether the person-centered planning process complies with Code of Federal
13.21 Regulations, title 42, section 441.725, paragraph (a)(1)-(4). Based upon the results of the
13.22 evaluation, the license holder must determine whether changes are needed to enhance
13.23 person-centeredness for the person, and, if so, make appropriate changes.

13.24 Subp. 4. **Professional standards for positive support strategies.** The license holder
13.25 must use professional standards for positive support strategies that are fully consistent

14.1 with this chapter. Examples of professional standards that a license holder may use as a
14.2 resource to develop positive support strategies are stated in items A to F. When relying
14.3 on one of the following professional standards, the license holder must use the most
14.4 recently updated version of those standards:

14.5 A. the Association for Positive Behavior Support Standards of Practice;

14.6 B. the United States Department of Health and Human Services, Substance
14.7 Abuse and Mental Health Services Administration (SAMHSA) National Registry of
14.8 Evidence-Based Programs and Practices;

14.9 C. SAMHSA Roadmap to Seclusion and Restraint Free Mental Health Services;

14.10 D. the Behavior Analyst Certification Board Guidelines for Responsible
14.11 Conduct for Behavior Analysts;

14.12 E. the NADD Competency-Based Clinical Certification Program Competency
14.13 Standard 1: Positive Behavior Support and Effective Environments; or

14.14 F. other standards approved by the commissioner that:

14.15 (1) have been peer-reviewed;

14.16 (2) are widely accepted as authoritative; and

14.17 (3) reflect current best practices.

14.18 **9544.0040 FUNCTIONAL BEHAVIOR ASSESSMENT.**

14.19 Subpart 1. Who must conduct. The license holder's qualified professional or an
14.20 external qualified professional must conduct the functional behavior assessment. The
14.21 license holder must verify and document that the qualified professional or external
14.22 qualified professional conducting the assessment meets the applicable qualification
14.23 requirements in part 9544.0020, subpart 16 or 46.

15.1 Subp. 2. When required. A functional behavior assessment is required when a
15.2 qualified professional or external qualified professional develops or modifies a written
15.3 intervention to change a target behavior.

15.4 Subp. 3. Required elements. To perform a functional behavior assessment, the
15.5 qualified professional or external qualified professional must directly observe the person.
15.6 The professional must select one or more of the elements listed in items A to D and
15.7 evaluate whether the elements make the target behavior more or less likely to occur:

15.8 A. biological factors, identified through a medical assessment or a dental
15.9 assessment;

15.10 B. psychological factors, identified through a diagnostic or suicidality
15.11 assessment;

15.12 C. environmental factors, identified through direct observation or interviewing
15.13 a significant individual in the person's life; and

15.14 D. quality of life indicators based on the person's goals and needs within the
15.15 domains of a meaningful life.

15.16 The professional must use the evaluation to generate a hypothesis about why the behavior
15.17 occurs.

15.18 Subp. 4. Scope of evaluation. If the qualified professional or external qualified
15.19 professional determines that the hypothesis about why the behavior occurs requires
15.20 additional evaluation, the qualified professional or external qualified professional must
15.21 evaluate additional elements listed in subpart 3 that were not previously considered, if any.

15.22 **9544.0050 PERMITTED PROCEDURES.**

15.23 Subpart 1. Specific procedures permitted. In addition to the procedures identified in
15.24 Minnesota Statutes, section 245D.06, subdivision 7, that are permitted for use by license

16.1 holders, the following procedures are permitted as approved by the expanded support team
16.2 and, in the case of a child, the child's parent or parents:

16.3 A. positive verbal correction that is specifically focused on the behavior being
16.4 addressed; and

16.5 B. temporary withholding or removal of objects being used to hurt self or others.

16.6 Subp. 2. Documentation required. The license holder must document a procedure
16.7 approved under subpart 1.

16.8 **9544.0060 PROHIBITIONS AND RESTRICTIONS.**

16.9 Subpart 1. General prohibitions. The procedures identified in Minnesota Statutes,
16.10 section 245D.06, subdivision 5, are prohibited and are governed by the requirements
16.11 of that section and this chapter.

16.12 Subp. 2. Specific prohibitions. The actions or procedures listed in items A to Y are
16.13 prohibited from use as a substitute for adequate staffing, for a behavioral or therapeutic
16.14 program to reduce or eliminate behavior, as punishment, or for staff convenience:

16.15 A. using prone restraint, metal handcuffs, or leg hobbles;

16.16 B. using faradic shock;

16.17 C. speaking to a person in a manner that ridicules, demeans, threatens, or is
16.18 abusive;

16.19 D. using physical intimidation or a show of force;

16.20 E. containing, restricting, isolating, secluding, or otherwise removing a person
16.21 from normal activities when it is medically contraindicated or without monitoring the
16.22 person;

16.23 F. denying or restricting a person's access to equipment and devices such as
16.24 walkers, wheelchairs, hearing aids, and communication boards that facilitate the person's

17.1 functioning. When the temporary removal of the equipment or device is necessary to
17.2 prevent injury to the person or others or serious damage to the equipment or device, the
17.3 equipment or device must be returned to the person as soon as possible;

17.4 G. using painful techniques, including intentional infliction of pain or injury,
17.5 intentional infliction of fear of pain or injury, dehumanization, and degradation;

17.6 H. hyperextending or twisting a person's body parts;

17.7 I. tripping or pushing a person;

17.8 J. using punishment of any kind;

17.9 K. requiring a person to assume and maintain a specified physical position
17.10 or posture;

17.11 L. using forced exercise;

17.12 M. totally or partially restricting a person's senses;

17.13 N. presenting intense sounds, lights, or other sensory stimuli;

17.14 O. using a noxious smell, taste, substance, or spray, including water mist;

17.15 P. depriving a person of or restricting access to normal goods and services, or
17.16 requiring a person to earn normal goods and services;

17.17 Q. using token reinforcement programs or level programs that include a
17.18 response cost or negative punishment component;

17.19 R. using a person receiving services to discipline another person receiving
17.20 services;

17.21 S. using an action or procedure which is medically or psychologically
17.22 contraindicated;

18.1 T. using an action or procedure that might restrict or obstruct a person's airway
18.2 or impair breathing, including techniques whereby individuals use their hands or body to
18.3 place pressure on a person's head, neck, back, chest, abdomen, or joints;

18.4 U. interfering with a person's fundamental rights, except as allowed by
18.5 Minnesota Statutes, section 245D.04, subdivision 3, paragraph (c). For purposes of this
18.6 item, "fundamental rights" means rights afforded in federal regulation or state licensing
18.7 standards governing the program;

18.8 V. mechanical restraint, in accordance with Minnesota Statutes, section
18.9 245D.06, subdivision 5;

18.10 W. chemical restraint, in accordance with Minnesota Statutes, section 245D.06,
18.11 subdivision 5;

18.12 X. manual restraint, except in an emergency in accordance with Minnesota
18.13 Statutes, section 245D.061; and

18.14 Y. using any other interventions or procedures that may constitute an aversive
18.15 or deprivation procedure.

18.16 Subp. 3. **Restrictions.** Restrictions on the use of procedures as identified under
18.17 Minnesota Statutes, section 245D.06, subdivision 6, are governed by the requirements
18.18 of that section and this chapter.

18.19 **9544.0070 EMERGENCY USE OF MANUAL RESTRAINT.**

18.20 Subpart 1. **Governing law and requirements.** Emergency use of manual restraint
18.21 and the requirements for a positive support transition plan are governed by Minnesota
18.22 Statutes, sections 245D.06, subdivision 8, and 245D.061, the requirements of this chapter,
18.23 and the forms and instructions for the positive support transition plan.

18.24 Subp. 2. **Record keeping.** The license holder must retain documentation of
18.25 emergency use of manual restraint or other documents required in this part in the person's

19.1 permanent record for at least five years after creation of the documentation or other
19.2 documents.

19.3 **9544.0080 INFORMED CONSENT.**

19.4 Subpart 1. **When informed consent is required.** At the time of service initiation, or
19.5 when the license holder adopts or changes a policy about the emergency use of manual
19.6 restraint, the license holder must obtain written informed consent before emergency use
19.7 of manual restraint is implemented and must document that informed consent has been
19.8 obtained. If the continued use of previously used restrictive interventions is temporarily
19.9 permitted in accordance with the requirements in Minnesota Statutes, section 245D.06,
19.10 subdivision 8, the license holder must obtain written informed consent authorizing the
19.11 use of a restrictive intervention in the manner set out in the forms and instructions before
19.12 using the restrictive intervention.

19.13 Subp. 2. **Authority to give consent.** The license holder must obtain written informed
19.14 consent from the person receiving services, or from the person's legal representative
19.15 acting within the scope of the legal representative's authority. When a person has a legal
19.16 representative, the license holder must encourage the legal representative to consider
19.17 the person's preferences.

19.18 **9544.0090 STAFF QUALIFICATIONS AND TRAINING.**

19.19 Subpart 1. **Core training for staff.** The license holder must ensure that staff
19.20 responsible to develop, implement, monitor, supervise, or evaluate positive support
19.21 strategies, a positive support transition plan, or the emergency use of manual restraint
19.22 complete training from qualified individuals prior to assuming these responsibilities.
19.23 Previous equivalent training approved by the commissioner fulfills these requirements.

19.24 Subp. 2. **Function-specific training.** In addition to the core training as required by
19.25 subpart 1 and determining competency as required by subpart 4, the license holder must
19.26 ensure that staff receive additional training based on their level of responsibility and

20.1 qualifications, as set out in items A to E, prior to assuming these responsibilities. Previous
20.2 equivalent training approved by the commissioner fulfills these requirements.

20.3 A. Direct support staff must complete four hours of additional training on
20.4 the following:

20.5 (1) permitted and prohibited procedures identified in Minnesota Statutes,
20.6 section 245D.06, subdivisions 6 and 7;

20.7 (2) the situations in which staff must contact 911 services in response to an
20.8 imminent risk of harm to the person or others;

20.9 (3) the procedures and forms staff must use to monitor and report use of
20.10 restrictive interventions that are part of a positive support transition plan;

20.11 (4) the procedures and requirements for notifying members of the person's
20.12 expanded support team after use of a restrictive intervention with the person;

20.13 (5) trauma-informed care, including information on the neurological,
20.14 biological, psychological, and social effects of trauma and violence on an individual;

20.15 (6) positive support strategies, such as positive behavioral supports and
20.16 motivational interviewing;

20.17 (7) desired, organization-wide adoption of positive support principles;

20.18 (8) basics of behavior change;

20.19 (9) cultural competence;

20.20 (10) human relations and respectful communications;

20.21 (11) personal accountability;

20.22 (12) employee self-care and collegial care of colleagues; and

20.23 (13) understanding diagnosis and medication.

21.1 B. Staff who implement positive support strategies must complete four hours of
21.2 additional training on the following, at a minimum:

- 21.3 (1) principles underlying positive support strategies;
21.4 (2) the development and implementation of positive support strategies;
21.5 (3) person-centered planning;
21.6 (4) de-escalation;
21.7 (5) use of positive support strategies;
21.8 (6) relationship between behavior and a person's environment;
21.9 (7) staff self-care after emergencies;
21.10 (8) collegial care;
21.11 (9) knowing how and when to communicate with the person's family;
21.12 (10) understanding diagnosis and medication; and
21.13 (11) when to use crisis resources.

21.14 C. Staff who develop positive support strategies must complete four hours of
21.15 additional training on the following, at a minimum:

- 21.16 (1) positive support strategy theory training;
21.17 (2) behavior plan development under guided supervision;
21.18 (3) positive support strategy research and resources;
21.19 (4) supervision, including how to train, coach, and evaluate staff and
21.20 communicate effectively; and
21.21 (5) continuing education requirements relevant to the field of the staff.

21.22 D. Staff who oversee the development and implementation of positive support
21.23 strategies must complete four hours of additional training on the following, at a minimum:

- 22.1 (1) functional behavior assessment, also known as functional assessment;
22.2 (2) how to apply person-centered planning;
22.3 (3) the relationship between behavior and biology;
22.4 (4) how to integrate disciplines to develop plans;
22.5 (5) how to design and use data systems to measure effectiveness of care; and
22.6 (6) information about resources of the human services system, its
22.7 procedures, and specific roles in the local system.

22.8 E. License holders, executives, managers, and owners in nonclinical roles must
22.9 complete four hours of additional training on the following, at a minimum:

- 22.10 (1) outcomes they and their staff are responsible to achieve;
22.11 (2) clarity between the roles of clinical staff and nonclinical staff;
22.12 (3) how to include staff in organizational decisions;
22.13 (4) where providers can access additional resources on positive support
22.14 strategies and person-centered planning;
22.15 (5) management of the organization based upon person-centered thinking
22.16 and practices; and
22.17 (6) person-centered thinking at the organizational level and how to address
22.18 it in the organization.

22.19 Subp. 3. Annual refresher training. The license holder must ensure that staff
22.20 complete four hours of refresher training on an annual basis covering each of the training
22.21 areas listed in subpart 2 that are applicable to the staff and their responsibilities.

22.22 Subp. 4. Determining competency of the staff. The license holder must ensure that
22.23 staff demonstrate competency through knowledge testing or observed skill assessment
22.24 conducted by a trainer or instructor as required in items A to C.

23.1 A. Before implementing positive support strategies, the staff must demonstrate
23.2 competency to perform the positive support strategies relevant to the primary disability,
23.3 diagnosis, or interfering behavior of the person in the manner described in the
23.4 documentation required by part 9544.0030, subpart 1.

23.5 B. Before implementing restrictive procedures permitted in accordance with
23.6 the requirements of this chapter, the staff must demonstrate competency to safely and
23.7 correctly perform the specific restrictive interventions relevant to the person's primary
23.8 disability, diagnosis, or interfering behavior included in the positive support transition
23.9 plan in the manner described in the plan.

23.10 C. Any time a change is made to the relevant content in the positive support
23.11 transition plan or the restrictive intervention identified in the plan, the staff must review,
23.12 receive instruction, and demonstrate competency on the requirements in items A and B.

23.13 Subp. 5. **Documentation.** The license holder must document completion of core
23.14 training, additional training, and competency testing or assessment for each staff in the
23.15 personnel record. The license holder must document the date the training, testing, or
23.16 assessment was completed; the number of training hours per subject area; and the name
23.17 and qualifications of the trainer or instructor. The license holder must also verify and
23.18 maintain evidence of staff qualifications in the personnel record, including documentation
23.19 of the following:

23.20 A. education and experience qualifications relevant to the staff's scope of
23.21 practice, responsibilities assigned to the staff, and the needs of the general population of
23.22 persons served by the program; and

23.23 B. professional licensure, registration, or certification, when applicable.

24.1 **9544.0100 DOCUMENTATION AND RECORD KEEPING REQUIREMENTS.**

24.2 Subpart 1. Documentation of use of positive support strategies. Except as
24.3 provided in subpart 2, the license holder must document compliance with the requirements
24.4 of this chapter. The license holder must comply with the positive support strategy
24.5 documentation requirements in part 9544.0030, subpart 1. The license holder must
24.6 maintain appropriate data that:

24.7 A. reveals the progress or lack of progress towards each outcome or goal for
24.8 each person;

24.9 B. ensures that staff are accountable for the services provided to the person; and

24.10 C. ensures that services can be evaluated and monitored by the license holder
24.11 and the commissioner.

24.12 Subp. 2. Exemption. A license holder providing family child care, family foster care,
24.13 or family adult day services is exempt from the requirements to document general positive
24.14 support strategy activities for children and adults for whom a positive support transition
24.15 plan is not required, including the documentation requirements in part 9544.0030, subpart 1.

24.16 Subp. 3. Documentation of outcomes. The license holder must document the
24.17 progress or lack of progress towards each outcome or goal for each person, including the
24.18 progress or lack of progress on quality of life indicators.

24.19 Subp. 4. Record keeping. The information required in this part must be retained
24.20 in the person's permanent record for at least five years from the creation or collection
24.21 of the information.

24.22 **9544.0110 REPORTING USE OF RESTRICTIVE INTERVENTIONS AND**
24.23 **INCIDENTS.**

24.24 License holders must use the behavior intervention report form required by the
24.25 commissioner to report the following to the commissioner:

- 25.1 A. an emergency use of manual restraint;
- 25.2 B. a medical emergency occurring as a result of the use of a restrictive
- 25.3 intervention with a person that leads to a call to 911 or seeking physician treatment or
- 25.4 hospitalization for a person;
- 25.5 C. a behavioral incident that results in a call to 911;
- 25.6 D. a mental health crisis occurring as a result of the use of a restrictive
- 25.7 intervention that leads to a call to 911 or a provider of mental health crisis services as
- 25.8 defined in Minnesota Statutes, section 245.462, subdivision 14c;
- 25.9 E. an incident that requires a call to mental health mobile crisis intervention
- 25.10 services;
- 25.11 F. a person's use of crisis respite services due to use of a restrictive intervention;
- 25.12 G. use of pro re nata (PRN) medication to intervene in a behavioral situation.
- 25.13 This does not include the use of a psychotropic medication prescribed to treat a medical
- 25.14 symptom or a symptom of a mental illness or to treat a child with severe emotional
- 25.15 disturbance;
- 25.16 H. an incident that the person's positive support transition plan requires the
- 25.17 program to report; or
- 25.18 I. use of a restrictive intervention as part of a positive support transition plan as
- 25.19 required in the plan.

25.20 **9544.0120 QUALITY ASSURANCE AND PROGRAM IMPROVEMENT.**

- 25.21 A license holder must adopt a program improvement process to assess the ongoing
- 25.22 implementation of positive support strategies and person-centered planning and to identify
- 25.23 program strengths and opportunities for improvement. The license holder must perform
- 25.24 these activities at least every six months. Upon review of the information, the license
- 25.25 holder must take action to remedy problems or concerns identified in the positive support

26.1 strategies and person-centered planning program. The license holder must document
26.2 program improvement activities and submit process and outcome data as requested by
26.3 the commissioner.

26.4 **9544.0130 EXTERNAL PROGRAM REVIEW COMMITTEE.**

26.5 Subpart 1. **Appointment.** The commissioner shall appoint members to an external
26.6 program review committee to monitor the implementation of this chapter.

26.7 Subp. 2. **Membership.** The commissioner must select committee members based
26.8 on their expertise and knowledge on the use of positive support strategies as alternatives
26.9 to the use of restrictive interventions. The committee shall include an expert in positive
26.10 support strategies; a mental health professional as defined in Minnesota Statutes, section
26.11 245.462; a licensed health professional as defined in Minnesota Statutes, section 245D.02,
26.12 subdivision 14; and a representative of the Department of Health.

26.13 Subp. 3. **Duties and responsibilities.** The external program review committee shall
26.14 monitor implementation of this chapter, make recommendations to the commissioner about
26.15 policy changes related to the requirements in this chapter, and make recommendations
26.16 to the commissioner to approve or deny requests for emergency use of procedures in
26.17 accordance with Minnesota Statutes, section 245.8251, subdivision 4. The committee shall:

26.18 A. **review requests made in accordance with the requirements of Minnesota**
26.19 Statutes, section 245D.06, subdivision 8, paragraph (b), for emergency use of procedures
26.20 that have been part of an approved positive support transition plan when necessary to protect
26.21 a person from imminent risk of serious injury as defined in Minnesota Statutes, section
26.22 245.91, subdivision 6, due to self-injurious behavior, and make a recommendation to the
26.23 commissioner to approve or deny these requests. The committee must establish criteria on
26.24 which to base approvals and denials, and must include in an approval the additional terms
26.25 or conditions that the license holder must meet specific to that approval, if any;

27.1 B. review requests for use of a prohibited procedure that is not specifically
27.2 permitted by part 9544.0050, or specifically prohibited by part 9544.0060, and make a
27.3 recommendation to the commissioner to approve or deny these requests based on criteria
27.4 established by the committee;

27.5 C. evaluate the programs and systems of a license holder making a request
27.6 under item A or B to ascertain the license holder's overall capacity to serve persons who
27.7 are the subject of the request; and

27.8 D. review each reported emergency use of manual restraint and the license
27.9 holder's response to the emergency use for the person. The commissioner must identify
27.10 criteria that the external program review committee will use to evaluate the license holder's
27.11 response. If the committee determines that a change is needed to reduce the frequency
27.12 or duration of future emergency uses by the license holder, the external program review
27.13 committee must provide guidance to the license holder about its response.

27.14 Subp. 4. **Number of external program review committees.** The commissioner
27.15 may designate more than one external program review committee based on the number
27.16 of requests for emergency use of procedures reviewed by the interim review panel under
27.17 Minnesota Statutes, section 245.8251, subdivision 4. The criteria used to review requests
27.18 according to subpart 3, items A and B, must be uniform across committees.

27.19 **9544.0140 VARIANCES.**

27.20 A license holder subject to Minnesota Statutes, chapter 245A, may request a variance
27.21 to a requirement in this chapter from the commissioner according to Minnesota Statutes,
27.22 section 245A.04, subdivision 9.

27.23 **REPEALER.** Minnesota Rules, parts 9525.2700; 9525.2710, subparts 1, 2, 3, 4, 5, 6,
27.24 7, 8, 9, 10, 11, 12, 13, 14a, 15, 16a, 16b, 17, 19, 19a, 20, 21a, 22, 23, 24, 25, 26, 27, 28,
27.25 29, 31, 32, 33a, 34, and 35; 9525.2720; 9525.2730; 9525.2740; 9525.2750, subparts 1,
27.26 1a, 2, 2a, and 4; 9525.2760, subparts 1, 2, 4, 5, and 6; 9525.2770, subparts 1, 2, 5, and 6;

- 28.1 9525.2780, subparts 2, 3, 4, 5, and 7; 9525.2790; 9525.2800; and 9525.2810, are repealed
- 28.2 effective August 31, 2015.

- 28.3 **EFFECTIVE DATE.** Parts 9544.0005 to 9544.0140 are effective August 31, 2015.